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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:	) Before the Examiner:
Bradley J. Coates et al.	) David J. Isabella
	)
Serial No.: 09/448,086	) Group Art Unit:
	) 3738
Filed: November 23, 1999	) Attorney Docket No.:
	) MSDI-539/PC263.07
BONE GRAFTS	)
	) November 14, 2006

**TERMINAL DISCLAIMER**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The undersigned attorney of record hereby represents that the owner Warsaw Orthopedic, Inc., a corporation of the State of Indiana, having a principal place of business at 2500 Silveus Crossing, Warsaw, Indiana 46581, and successor in interest to SDGI Holdings, Inc., has a 100% ownership interest in the instant application and U.S. Patent No. 5,888,222 and U.S. Patent No. 6,423,095, as evidenced by the following documents:

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:
November 14, 2006
Date of Transmission
Douglas A. Collier
Name of Registered Representative
<i>Douglas A. Collier</i>
Signature

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# Best Available Copy

**Assignment of U.S. Patent No. 5,888,222 from Bradley J. Coates, James Van Hoeck, and Jeffrey W. Poyner to SDGI Holdings, Inc.** as recorded by the U.S. Patent and Trademark Office on March 15, 1999, at Reel 009805, Frame 0875, which is a corrective assignment to correct the names of the assignors in the assignment recorded at Reel 009505, Frame 0223 on October 9, 1998; **Assignment of U.S. Patent No. 6,423,095 from James E. Van Hoeck, Troy McDonald, Bradley J. Coates, Regis W. Haid, Jr., Stephen E. Heim, Kevin Foley and Eugene C. Eckstein to Danek Medical, Inc.** as recorded by the U.S. Patent and Trademark Office on July 8, 1996, at Reel 008021, Frame 0871, whose interest was assigned to SDGI Holdings, Inc. as recorded by the U.S. Patent and Trademark Office on September 2, 1997 at Reel 008811, Frame 0663; **Assignment of the present application from Bradley J. Coates, James Van Hoeck, and Jeffrey W. Poyner to SDGI Holdings,** as recorded by the U.S. Patent and Trademark Office January 17, 2002 at Reel 012491, Frame 0666 and by assignment of the parent application 08/948,135 (issued as U.S. Patent No. 5,989,289) on August 7, 1998, at Reel 9366, Frame 0071; and **Certificate of Merger of SDGI Holdings, Inc. into Warsaw Orthopedic, Inc.,** a copy of which is attached hereto.

The undersigned attorney of record, on behalf of the owners, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date of the full statutory term of U.S. Patent No. 5,888,222 and U.S. Patent No. 6,423,095 (hereafter "the prior patents"), as the term of the prior patents is defined in 35 U.S.C. §§154 and 173, and as the term of the prior patents is presently shortened by any terminal disclaimers. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patents are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owners do not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§154 and 173 of the prior patents, as the term of the prior patents are presently shortened by a terminal disclaimer, in the event that either of the prior patents later: expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321; has all claims cancelled by a reexamination certificate; is reissued; or a

in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Enclosed is the statutory fee of \$130.00 pursuant to 37 C.F.R. §1.20(d). In addition, please provide any extensions of time that may be necessary and charge any fees that may be due to Deposit Account No. 12-2424, but do not include any payment of issue fees that are or may become due.

Respectfully submitted,

By: 

Gregory B. Coy  
Reg. No. 40,967  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
(317) 238-6333 (direct)

Date: November 14, 2006

# Delaware

PAGE 1

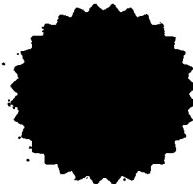
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"SDGI HOLDINGS, INC.", A DELAWARE CORPORATION,  
"SOFAMOR DANEK HOLDINGS, INC.", A DELAWARE CORPORATION,  
WITH AND INTO "WARSAW ORTHOPEDIC, INC." UNDER THE NAME OF  
"WARSAW ORTHOPEDIC, INC.", A CORPORATION ORGANIZED AND EXISTING  
UNDER THE LAWS OF THE STATE OF INDIANA, AS RECEIVED AND FILED IN  
THIS OFFICE THE TWENTY-EIGHTH DAY OF APRIL, A.D. 2006, AT 2:06  
O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
NEW CASTLE COUNTY RECORDER OF DEEDS.

4150541 8100M  
060397764



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4707608

DATE: 05-01-06

Secretary of State  
Division of Corporations  
Delivered 02:20 PM 04/28/2006  
FILED 02:06 PM 04/28/2006  
SIN 060397764 - 2762814 FILE

CERTIFICATE OF MERGER  
of  
SDCH HOLDINGS, INC.,  
a Delaware corporation  
and  
SOFAMOR DANEK HOLDINGS, INC.,  
a Delaware corporation  
into  
WARSAW ORTHOPEDIC, INC.,  
an Indiana corporation

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

**FIRST:** The names of the constituent corporations to the merger are SDCH Holdings, Inc., a Delaware corporation, Sofamor Danek Holdings, Inc., a Delaware corporation and Warsaw Orthopedic, Inc., an Indiana corporation.

**SECOND:** An Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8, Section 252 of the Delaware General Corporation Law.

**THIRD:** The surviving corporation will be Warsaw Orthopedic, Inc., an Indiana corporation.

**FOURTH:** The Articles of Incorporation of the surviving corporation shall be its Articles of Incorporation.

**FIFTH:** The effective date of the merger is April 28, 2006.

**SIXTH:** An executed copy of the Agreement and Plan of Merger is on file at the office of Warsaw Orthopedic, Inc. at 710 Medtronic Parkway, Minneapolis, Minnesota 55432.

**SEVENTH:** A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

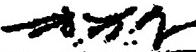
**EIGHT:** The surviving corporation agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of any constituent corporation of Delaware, as well as for enforcement of any obligation of the surviving corporation arising from this merger, including any suit or other proceeding to enforce the rights of any stockholders as determined in appointed proceedings pursuant to the provisions of Section 262 of the Delaware General Corporation Law, and irrevocably appoints the Secretary of State of Delaware as its agent to accept service of process in any such suit or proceeding. The Secretary of State shall mail any such process to the surviving corporation at 710 Medtronic Parkway, Minneapolis, Minnesota 55432.

TECH CORPORATION TRUST WILL TEAR P2

(FBI) 4-28-06 13:13:07 ET 13:08/HQ 4863796139 P 3

In witness whereof, and serving notice has been given this certificate to be signed  
by an authorized officer, the 23<sup>rd</sup> day of April, 2006.

WILSON INSURANCE, INC.

  
By \_\_\_\_\_  
John Wilson  
President

State of Indiana  
Office of the Secretary of State

CERTIFICATE OF MERGER  
of  
WARSAW ORTHOPEDIC INC

I, TODD ROKITA, Secretary of State of Indiana, hereby certify that Articles of Merger of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

The following non-surviving entity(s):

SDGI HOLDINGS, INC.

a(n) Delaware Non-Qualified Foreign Corporation

SOFAMOR DANEK HOLDINGS, INC.

a(n) Delaware Non-Qualified Foreign Corporation

merged with and into the surviving entity:

WARSAW ORTHOPEDIC INC

NOW, THEREFORE, with this document I certify that said transaction will become effective  
Friday, April 28, 2006.

In Witness Whereof, I have caused to be  
affixed my signature and the seal of the  
State of Indiana, at the City of Indianapolis,  
April 28, 2006.



A handwritten signature of Todd Rokita in black ink.

TODD ROKITA,  
SECRETARY OF STATE

197101-484 / 2006050157178

APPROVED  
AND  
FILED

*Carl R. Reed*  
IN. SECRETARY OF STATE

2006 APR 28 AM 11:51

ARTICLES OF MERGER  
of  
SDGI HOLDINGS, INC.,  
a Delaware corporation  
and  
SOFAMOR DANEK HOLDINGS, INC.,  
a Delaware corporation  
into  
WARSAW ORTHOPEDIC, INC.,  
an Indiana corporation

Pursuant to the provisions of Sections 23-1-40-5 and 23-1-40-7 of the Indiana Business Corporation Law ("IBCL"), the following Articles of Merger are executed on the date hereinafter set forth:

1. The names of the corporations that are parties to the merger are SDGI Holdings, Inc. ("SDGI"), a Delaware corporation, Sofamor Danek Holdings, Inc. ("SD Holdings"), a Delaware corporation and Warsaw Orthopedic, Inc. (the "Company"), an Indiana corporation and the surviving corporation.

2. The surviving corporation is Warsaw Orthopedic, Inc., an Indiana corporation.

3. The merger will be accomplished pursuant to the Agreement and Plan of Merger attached hereto as Exhibit A and incorporated herein by reference (the "Plan of Merger"). The manner of adoption and vote by which the Plan of Merger was approved by SDGI, SD Holdings and the Company are as follows:

(a) Action by SDGI

(i) Action by Directors. By a written consent executed as of April 28, 2006, the Board of Directors of SDGI unanimously approved resolutions adopting the Plan of Merger.

(ii) Action by the Shareholders. By a written consent executed as of April 28, 2006, the sole shareholder of SDGI approved resolutions adopting the Plan of Merger as follows:

	<u>Common Shares</u>
Number of Outstanding Shares	1,000
Number of Votes Entitled to be Cast	1,000
Number of Votes in Favor	1,000
Number of Votes Against	-0-

(b) Action by SD Holdings

(i) Action by Directors. By a written consent executed as of April 28, 2006, the Board of Directors of SD Holdings unanimously approved resolutions adopting the Plan of Merger.

(ii) Action by the Shareholders. By a written consent executed as of April 28, 2006, the sole shareholder of SD Holdings approved resolutions adopting the Plan of Merger as follows:

<u>Common Shares</u>	
Number of Outstanding Shares	1,000
Number of Votes Entitled to be Cast	1,000
Number of Votes in Favor	1,000
Number of Votes Against	-0-

(c) Action by the Company

(i) Action by Directors. By a written consent executed as of April 28, 2006, the Board of Directors of the Company unanimously approved resolutions adopting the Plan of Merger.

(ii) Action by the Shareholders. By a written consent executed as of April 28, 2006, the sole shareholder of the Company approved resolutions adopting the Plan of Merger as follows:

<u>Common Shares</u>	
Number of Outstanding Shares	1,000
Number of Votes Entitled to be Cast	1,000
Number of Votes in Favor	1,000
Number of Votes Against	-0-

The undersigned swear that the foregoing is true and accurate and that they have the authority to sign these Articles of Merger on behalf of SDG&L, SD Holdings and the Company, respectively.

Dated: April 28, 2006

SDG&L HOLDINGS, INC.

By: RC

Robert C. Campbell  
President

Dated: April 28, 2006

REGARMOE DAIRY HOLDINGS, INC.

By: RC

Robert C. Campbell  
President

Dated: April 28, 2006

WARSAW CEMENT, INC.

By: PLW

Peter L. Weidly  
President

Exhibit A

2006 APR 28 A

**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is dated as of April 28, 2006, by and among Sofamor Danek Holdings, Inc., a Delaware corporation ("SD Holdings"), SDGI Holdings, Inc., a Delaware corporation ("SDGI") and Warsaw Orthopedic, Inc., an Indiana corporation ("Warsaw").

The parties hereto agree as follows:

**ARTICLE 1.**  
**NAMES OF CONSTITUTIVE CORPORATIONS**  
**AND SURVIVING CORPORATION**

1.1) The names of the constituent corporations are SDGI Holdings, Inc. ("SDGI"), a Delaware corporation, Sofamor Danek Holdings, Inc. ("SD Holdings"), a Delaware corporation and Warsaw Orthopedic, Inc. ("Warsaw"), an Indiana corporation. The constituent corporations shall be combined by the merger of SDGI and SD Holdings with and into Warsaw, as the surviving corporation (the "Merger"), pursuant to the terms and provisions of this Agreement and Plan of Merger and pursuant to the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL") and the Indiana Business Corporation Law (the "IBCL").

**ARTICLE 2.**  
**MEANS OF EFFECTING**  
**MERGER AND CONVERTING STOCK**

2.1) **The Merger.** At the Effective Time (as defined in Section 2.2), in accordance with the DGCL and the IBCL, SDGI and SD Holdings will merge with and into Warsaw, the separate existence of SDGI and SD Holdings, respectively, shall cease and Warsaw shall alone continue in existence as the surviving corporation (the "Surviving Corporation") in the Merger.

2.2) **Effectiveness of Merger.** The Merger shall become effective on the date on which and at the time which the Certificate of Merger has been filed with the Delaware Secretary of State and the Articles of Merger have been filed with Indiana Secretary of State (the time the Merger becomes effective being referred to herein as the "Effective Time" and the date of such effectiveness being referred to herein as the "Effective Date").

2.3) **Articles of Incorporation; Bylaws; Directors and Officers.** The Articles of Incorporation and Bylaws of Warsaw as in effect immediately prior to the Effective Time shall be the Articles of Incorporation and Bylaws of the Surviving Corporation until thereafter amended as provided therein and under the IBCL. The directors of Warsaw immediately prior to the Effective Time shall remain the directors of the Surviving Corporation and shall serve until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws and the IBCL. The officers of Warsaw immediately prior to the Effective Time will be the officers of the Surviving Corporation and shall serve until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws and the IBCL.

2.4) Effect on Warsaw Common Stock. The outstanding shares of Warsaw Common Stock shall be unaffected by the Merger and shall remain outstanding and represent shares of Common Stock of the Surviving Corporation.

2.5) Cancellation of SDGI Common Stock. As a result of the Merger and without any action on the part of the holder thereof, at the Effective Time, all shares of SDGI Common Stock shall cease to be outstanding and shall be cancelled and retired without payment of any consideration therefor.

2.6) Cancellation of SD Holdings Common Stock. As a result of the Merger and without any action on the part of the holder thereof, at the Effective Time, all shares of SD Holdings Common Stock shall cease to be outstanding and shall be cancelled and retired without payment of any consideration therefor.

### ARTICLE 3. GENERAL PROVISIONS

3.1) From and after the Effective Time, Warsaw agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of any constituent corporation of Delaware, as well as for enforcement of any obligation of the Surviving Corporation arising from this merger, including any suit or other proceeding to enforce the rights of any stockholder as determined in appraisal proceedings pursuant to the provisions of Section 262 of the Delaware General Corporation Law, and irrevocably appoints the Secretary of State of Delaware as its agent to accept service of process in any such suit or proceeding. The Secretary of State shall mail any such process to the surviving corporation at 710 Medtronic Parkway, Minneapolis, Minnesota 55432.

IN WITNESS WHEREOF, the undersigned have executed this Agreement and Plan of  
Merger as of the day and year first above written.

SCHAMIR DANCE HOLDINGS, INC.,  
a Delaware corporation

By: 

Robert C. Chapman  
President

SIMH HOLDINGS, INC.,  
a Delaware corporation

By: 

Robert C. Chapman  
President

WARSAW ORTHO INC., INC.  
a Delaware corporation

By: 

Paul L. Waddell  
President

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